

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

PROGRAM 360, LLC)
)
v.) NO. 3-13-0789
) JUDGE CAMPBELL
SCOTT CLEVELAND)

ORDER

Pending before the Court is Plaintiff's Motion for Default Judgment (Docket No. 65). On February 6, 2015, the Court granted Plaintiff's Motion for Entry of Default and Motion to Strike Defendant's Answer as sanctions, pursuant to Fed. R. Civ. P. 16(f) and 37, for Defendant's failure to obey Court Orders and to participate in his defense of this case. Docket No. 62. Defendant has filed no timely response to Plaintiff's Motion for Default Judgment. Plaintiff seeks judgment on both counts of its Second Amended Complaint, plus damages and interest.

Plaintiff's Motion for Default Judgment is GRANTED in part and DENIED in part. Judgment is entered for the Plaintiff on Count One of the Second Amended Complaint, breach of contract, for a total amount of \$1.2 million, the unpaid amounts required under the First Amendment to Agreement to Acquire Membership Interest (Docket No. 19-2).

Plaintiff's request for default judgment on Count Two of the Second Amended Complaint, intentional misrepresentation/promissory fraud, is denied. The Agreement between the parties specifically states: "The parties acknowledge and agree that they are not relying on any representations, oral or written, other than those expressly contained herein." Docket No. 19-1, p. 4. Moreover, the Agreement provides that there are no other promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, among the parties

other than as set forth in the Agreement. *Id.*, p. 3. Plaintiff, thus, has waived any right to claim reliance upon representations or promises by the Defendant outside of the Agreement. In any event, Plaintiff cannot obtain double recovery for its claims. Accordingly, Plaintiff's Motion for Default Judgment as to its claim for misrepresentation and promissory fraud is denied.

Plaintiff also seeks prejudgment and post-judgment interest on its damages. Plaintiff is awarded post-judgment interest from the date of this Order, in accordance with 28 U.S.C. § 1961. The Court, in its discretion, declines to award prejudgment interest. The alleged date of Defendant's breach is June 2011, and Plaintiff did not file this action until August 8, 2013.

For all these reasons, default judgment is hereby entered for Plaintiff against Defendant for \$1,200,000.00 plus post-judgment interest from the date of this Order.

This action, including Defendant's Counterclaim, is DISMISSED, and the Clerk is directed to close the file. The pretrial conference set for November 2, 2015, and the jury trial set for November 10, 2015, are canceled. This Order shall constitute the final judgment in this case pursuant to Fed. R. Civ. P. 58.

IT IS SO ORDERED.

Todd Campbell
TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE